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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/847,883

05/03/2001

David Allen Roberts

05918P2 USA

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7590

04/08/2004

AIR PRODUCTS AND CHEMICALS, INC.
PATENT DEPARTMENT
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EXAMINER

BOYD, JENNIFER A

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/847,883	Applicant(s) ROBERTS ET AL.	
	Examiner Jennifer A Boyd	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-11, 13-20, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-11, 13-20, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 19, 2003 has been entered. The Applicant's Amendments and Accompanying Remarks, filed November 19, 2003, have been entered and have been carefully considered. Claims 4 – 11, 13 – 20 and 22 – 23 are pending. The Declaration under 37 CFR 1.132 filed November 19, 2003 is insufficient to overcome the rejection of claims 4 – 20 and 22 – 23 as set forth in the previous Office Action dated October 22, 2003. The invention as currently claimed is not found to be patentable for reasons herein below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102/103

3. Claims 4 - 9, 11 and 23 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Pedersen et al. (US 6,017,872). The details of the rejection can be found in paragraph 4 of the previous Office Action dated October 22, 2003. The rejection is maintained.

Claim Rejections - 35 USC § 103

4. Claims 10, 13 – 15, 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pedersen et al. (US 6,017,872) in view of Julemont (US 4,931,201). The details of the rejection can be found in paragraph 5 of the previous Office Action dated October 22, 2003. The rejection is maintained.

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pedersen et al. (US 6,017,872) in view of Kramer et al. (US 4,847,089). The details of the rejection can be found in paragraph 6 of the previous Office Action dated October 22, 2003. The rejection is maintained.

6. Claims 17 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pedersen et al. (US 6,017,872). The details of the rejection can be found in paragraph 7 of the previous Office Action dated October 22, 2003. The rejection is maintained.

7. Claims 4 – 7, 9 – 10, 13 – 15 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon (US 6,284,718) in view of Znaiden et al. (US 6,159,487).

Simon is directed to a composition suitable for cosmetic or dermatological use (Title).

As to claim 23, Simon teaches that the composition comprises 0.01 – 0.5% by weight of a oxyethylenated acetylenic diol such as 2,4,7,9-tetramethyl-5-decyne-4,7-diol (column 1, lines 60 – 67 and column 2, lines 40 – 48). In Example 1, Simon teaches that the composition comprises water (column 5, lines 1 – 25).

Art Unit: 1771

As to claims 4 – 5, Simon teaches that the composition comprises 0.01 – 0.5% by weight of a oxyethylenated acetylenic diol (column 1, lines 60 – 67).

As to claims 9 and 11, Simon teaches that the composition comprises 2,4,7,9-tetramethyl-5-decyne-4,7-diol (column 2, lines 40 – 48).

As to claims 10, 13 – 15 and 23, Simon teaches the claimed invention except fails to disclose that the composition can be impregnated into a substrate comprising cotton, abaca, polyester, nylon, polyester/cellulose, rayon, polypropylene, rayon/polyester, polypropylene/cellulose, polyurethane, cotton/polyester and mixtures thereof as required by claim 10. Simon fails to teach that the substrate is a fibrous substrate as required by claim 13 or specifically a woven fibrous substrate as required by claim 14 or a non-woven fibrous substrate as required by claim 15.

Znaiden et al. is directed to a moistened cosmetic eye treatment pad (Title). Znaiden teaches a cosmetic product comprising a container, an absorbent pad and a fluid cosmetic composition, the pad and composition both being held within the container (Abstract). Znaiden teaches that the pad may comprise woven or non-woven materials and can comprise natural fibers such as cotton and wood pulp and synthetic fibers such as rayon, polypropylene, polyethylene and polyester (column 2, lines 25 – 45).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to impregnate the composition of Simon into the pad of Znaiden motivated by the desire to easily apply the composition to the skin by means of a durable and absorptive woven or non-woven substrate.

As to claim 6, 7 and 23, although Simon in view of Znaiden does not explicitly teach the claimed vapor pressure of at least 10^{-4} torr at 25°C as required by claims 23 and 6 and vapor pressure of at least 10^{-3} torr at 25°C as required by claim 7, it is reasonable to presume that vapor pressure of at least 10^{-4} torr at 25°C as required by claims 23 and 6 and vapor pressure of at least 10^{-3} torr at 25°C as required by claim 7 is inherent to Pedersen et al.. Support for said presumption is found in the use of like materials (i.e. a cleaning composition that includes a nonionic surfactant and water), which would result in the claimed property. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of vapor pressure of at least 10^{-4} torr at 25°C as required by claims 23 and 6 and vapor pressure of at least 10^{-3} torr at 25°C as required by claim 7, it is reasonable to presume that vapor pressure of at least 10^{-4} torr at 25°C as required by claims 23 and 6 and vapor pressure of at least 10^{-3} torr at 25°C as required by claim 7 would obviously have been present Pedersen product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

Art Unit: 1771

Response to Arguments

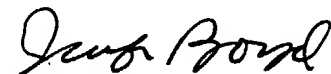
8. Applicant's arguments with respect to claims 4 – 20 and 22 - 23 have been fully considered but they are not persuasive.


The Declaration under 37 CFR 1.132 filed November 19, 2003 is insufficient to overcome the rejection of claims 4 – 20 and 22 - 23 based upon the rejections as set forth in the last Office action as detailed in paragraphs 4 – 7 because: a fair comparison by means of physical testing has not been made between the cleaning composition of Pedersen et al. (US 6,017,872) and the instant invention. For example, the low nonvolatile residue property has not been compared between the cleaning composition of Pedersen and the instant invention. Therefore, the Examiner has interpreted “consisting essentially of” to “comprising” and, in turn, the rejections over Pedersen remain valid.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer Boyd
March 31, 2004


Ula C. Ruddock
Primary Examiner
Tech Center 1700